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8      Attorney for Plaintiff  
 9      PATRICIA CLAIRE BANKSTON

10     **IN THE UNITED STATES DISTRICT COURT  
 11    FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 12    SAN JOSE DIVISION**

13     PATRICIA CLAIRE BANKSTON,  
 14    Plaintiff,  
 15     v.

16     PATENAUDA & FELIX, A  
 17     PROFESSIONAL CORPORATION, a  
 18     California corporation, and RAYMOND  
 19     ALCIDE PATENAUDA, individually and in  
 20     his official capacity,

21    Defendants.

22     Case No. C07-03396-JW-PVT

23     **DECLARATION OF  
 24    FRED W. SCHWINN  
 25    IN SUPPORT OF  
 26    AWARD OF ATTORNEY FEES  
 27    AND COSTS**

28     Judge:       Honorable Jeremy Fogel  
 1     Courtroom:    3, 5th Floor  
 2     Place:        280 South First Street  
 3     San Jose, California

4     I, Fred W. Schwinn, declare under penalty of perjury, under the laws of the United States,  
 5     28 U.S.C. § 1746, that the following statements are true:

- 6        1.      I am counsel for the Plaintiff in the above captioned case.  
 7        2.      I am a member in good standing of the bars of the following courts:

8        Supreme Court of the United States  
 9        Washington, DC  
 10      2003

11      Supreme Court of California  
 12      Sacramento, California  
 13      2003

14      Supreme Court of Kansas  
 15      Topeka, Kansas  
 16      1997

17      U.S. Court of Appeals for the Tenth Circuit  
 18      Denver, Colorado  
 19      1999

1           U.S. Court of Appeals for the Ninth Circuit  
2           San Francisco, California  
3           2003

4           U.S. District Court for the District of Kansas  
5           Topeka, Kansas  
6           1997

7           U.S. District Court for the Western District of Missouri  
8           Jefferson City, Missouri  
9           2001

10          U.S. District Court for the Northern District of California  
11          San Francisco, California  
12          2003

13          U.S. District Court for the Eastern District of California  
14          Sacramento, California  
15          2003

16          U.S. District Court for the Central District of California  
17          Los Angeles, California  
18          2003

19           3.       I am a 1994 graduate of Washburn University in Topeka, Kansas and a 1997  
20          graduate of Washburn University School of Law. In 1995 I passed the Uniform Certified Public  
21          Accountant's examination and was granted a Certified Public Accountant certificate from the  
22          Kansas Board of Accountancy. I am a member of the State Bar of California, Bar Association of  
23          San Francisco, National Association of Consumer Advocates, Consumer Attorneys of California,  
24          National Association of Consumer Bankruptcy Attorneys, California Bankruptcy Forum, and  
25          Topeka Area Bankruptcy Council of which I am a past Treasurer.

26           4.       From September 26, 1997, until December 21, 2003, I maintained a private  
27          law practice with an office located in Topeka, Kansas. In December of 2003 I relocated my law  
28          practice to California. My practice is limited exclusively to the representation of consumers, with  
            particular emphasis on representing consumer debtors under the United States Bankruptcy Code.  
            In addition to Bankruptcy cases, I handle matters under the Fair Debt Collection Practices Act, Truth  
            in Lending Act, Fair Credit Reporting Act, Telephone Consumers Protection Act, FTC Credit  
            Practices Rule, Uniform Commercial Code, common law fraud, misrepresentation and deceit, usury,  
            and other laws enacted to protect consumers. I undertake representation in many consumer cases  
            with the expectation of being paid a contingency amount from the proceeds of recovery, or being

1 paid based on an award of fees pursuant to a fee shifting statute such as the federal Fair Debt  
2 Collection Practices Act and California Rosenthal Fair Debt Collection Practices Act.

3           5. I have given a number of lectures to consumers and professional groups on  
4 consumer law issues, including the Topeka Area Bankruptcy Council and the Pro Bono Project in  
5 San Jose, California.

6           6. I have been a member of the National Association of Consumer Advocates  
7 since 1999 and have attended at least twelve (12) national conferences exclusively on consumer law  
8 issues.

9           7. I have been involved in many consumer cases involving a range of consumer  
10 protection laws. I have handled several cases that have resulted in reported decisions favorable to  
11 consumers including: *In re Crosby*, 261 B.R. 470 (D. Kan. 2001) (holding that the issuance of a  
12 Form 1099-C by a creditor forgives the debt); *In re Green*, 287 B.R. 827 (D. Kan. 2002) (holding  
13 that the inclusion of language in a Chapter 13 Plan which attempts to discharge student loans should  
14 be reviewed on a case-by-case basis); *Bilal v. Household Finance Corporation III (In re Bilal)*, 296  
15 B.R. 828 (D. Kan. 2003) (holding that the inclusion of language in a Chapter 13 Plan which rescinds  
16 a home mortgage loan under the Truth in Lending Act is binding on a mortgage creditor who fails  
17 to object before confirmation); and, *Ramirez v. Household Finance Corporation III (In re Ramirez)*,  
18 2003 Bankr. LEXIS 1364 (D. Kan. 2003) (finding violations of the Truth in Lending Act). I am also  
19 plaintiff's counsel in the *Quenzer v. Advanta Mortgage Corp. (In re Quenzer)*, 266 B.R. 760 (D.  
20 Kan. 2001) and *Quenzer v. Advanta Mortgage Corp. (In re Quenzer)*, 274 B.R. 899 (D. Kan. 2002)  
21 cases which were reversed and remanded in *Quenzer v. Advanta Mortgage Corp. (In re Quenzer)*,  
22 288 B.R. 884 (D. Kan. 2003). Despite the reversal, this case remains one of the leading cases in the  
23 country regarding rescission under the Truth in Lending Act in the bankruptcy context and it is still  
24 cited for the detail and clarity of the Bankruptcy Court's decision. See National Consumer Law  
25 Center, Truth in Lending (6<sup>th</sup> ed. 2007) at 453.

26           8. My firm's work in connection with this case is shown on the schedule  
27 attached hereto, marked Exhibit "A." My staff and I prepared our time records contemporaneously  
28 with our performance of the work, using the Amicus Attorney and Timeslips software packages for

1 law offices. The time records do not duplicate work performed in any other file.

2           9. For my services as an attorney in this case, the Consumer Law Center, Inc.,  
 3 seeks an hourly rate of \$300.00. I believe that this hourly rate is reasonable, and that it is  
 4 comparable to the rates being charged by attorneys of similar experience and expertise in the San  
 5 Francisco Bay Area's federal and state courts. I have been awarded an hourly rate of \$300 in a  
 6 number of cases in Northern California, including: *Citibank South Dakota, N.A., v. O'Connor*, Santa  
 7 Clara Case No. 1-05-CV-038648 (February 7, 2006) (J. Huber); *Maundu v. The Barnes Law Firm*,  
 8 Northern District Case No. C05-01939-JF-PVT (May 23, 2006) (J. Fogel); *Wallat v. Roush*,  
 9 Northern District Case No. C05-03518-JF-HRL (September 21, 2006) (J. Fogel); *Chan v. North*  
 10 *American Collectors, Inc.*, Northern District Case No. C06-00016-JL (January 26, 2007) (J. Larson);  
 11 *Chan v. Rosen & Loeb*, Northern District Case No. C06-04267-SBA-EDL (September 25, 2007) (J.  
 12 Armstrong); *Napier v. Collection Bureau of America, LTD.*, Northern District Case No. C07-02429-  
 13 MMC (October 29, 2007) (J. Chesney); *Asset Acceptance, LLC v. Mekonnen*, Santa Clara Case No.  
 14 1-06-CV-073155 (December 21, 2007) (J. Murphy); *Tong v. Capital Management Services Group*,  
 15 *Inc.*, Northern District Case No. C07-01026-RMW-HRL (January 18, 2008) (J. Whyte).

16           10. The Consumer Law Center, Inc., seeks compensation for 23.3 hours that I  
 17 spent performing legal services for Plaintiff in this case, as well as 6.5 hours of law clerk time.

18           11. In the San Francisco Bay Area it is customary for lawyers to itemize and bill  
 19 their clients separately, in addition to their regular hourly rate, for expert witness fees, court reporter  
 20 fees, long distance telephone calls, on-line research charges, copying and facsimile costs, postage  
 21 and delivery charges, and travel costs, including mileage, tolls and parking. The Consumer Law  
 22 Center, Inc., advanced the following fees and costs, and incurred the following expenses in this  
 23 matter:

24	Filing fees to Clerk of Court	\$ 350.00
25	Service of Process	\$ 171.50
26	Photocopying - 239 @ \$.20	\$ 47.80
27	Postage	\$ 10.82

1 TOTAL \$ 580.12

2 12. The requested attorney's fees and costs were reasonable and necessary to the  
3 litigation in this matter.

4 Executed at San Jose, California on June 27, 2008.

5

6 /s/ Fred W. Schwinn  
7 Fred W. Schwinn (SBN 225575)  
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